IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 1114 OF 2005

IN

SUIT NO. 258 OF 1996

MRS. JEAN NUSLY DUGGAN .. PLAINTIFF.

vs.

FEROZE HOMI DUGGAN

& ORS. .. DEFENDANTS.

AND

COURT RECEIVER. .. RESPONDENT.

Mr. Sanjay Jain a/w Ms. Deepa Mani i/by

S.K. Srivastav & Co. for deft.no.3.

CORAM : S.U. KAMDAR,J.

DATE : 2nd FEBRUARY, 2005.

P.C.

1. In the present case by an order dated 7.3.1996 the defendant no. 3 was appointed as the Receiver. The relevant portion of the order reads as under :-

a) Ad-interim Receiver is appointed in

terms of prayer (c) of the draft notice of motion with the substitution of the word 'except bracketed in red ink therein by the word 'including' with directions to the Receiver not to disturb possession of the 3rd Defendant and the Plaintiff but to appoint each of them as his agent in respect of the portion of the premises known as 'Lawnside' respectively occupied by the 3rd Defendant and the Plaintiff on usual terms and conditions but without security and without charging any royalty or compensation so far as the Plaintiff is concerned. The Receiver shall charge the royalty amount at the rate of Rs. 3,00,000/- (Rupees Three lacs) per month from the 3rd Defendant, being the amount which the 3rd Defendant is required to pay under the said Tenancy Agreement dated 6th June, 1994.

The 3rd Defendant shall also continue to pay regularly to the Receiver the tax amount and other outgoings required to be paid under Clause 1 of the said Tenancy Agreement and in his turn, the Receiver shall make payment thereof to the concerned Authorities."

2. An appeal was preferred therefrom being Appeal No. 375 of 1996. The said order was

thereafter varied by appeal Court order being order dated 15.4.1996. The matter thereafter came up for confirmation and by an order and judgment dated 23.6.1998 passed by the learned Single Judge (Jahagirdar J.), the said notice of motion was confirmed in terms of the ad-iterim order dated 7.3.1996 as modified from time to time. It is an admitted position that the defendant no. 3 surrendered the agency because of the default on his part of the terms and conditions of the agency agreement executed with the Court Receiver.

3. By the present chamber summons, the defendant no. 3 is seeking that he should be reappointed as an agent of the Court Receiver. In support of the chamber summons, he relies upon Rule 21 sub rule 25 to contend that the chamber summons for such a relief is maintainable. In my opinion, rule 25 has no application as there is no direction sought relating to the management and disposal of the property. In this case the defendant no. 3 is seeking to be re-appointed as an agent of the Court Receiver i.e. he seeks a fresh order for appointment as an agent of the Court Receiver. In my view, for reappointment as an agent of the Court Receiver the defendant no. 3 needs to take out an application by way of a motion and not by way of a chamber summons. Thus, Chamber summons dismissed as not maintainable.